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NOMINATION OF JAMES G. STEARNS

MAY 26 (legislative day, MAY 25), 1982.—Ordered to be printed

Mr. GARN, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

REPORT

together with

MINORITY VIEWS

The Committee on Banking, Housing, and Urban Affairs, to which was referred the nomination of James G. Stearns to be a public member of the Securities and Investor Protection Corporation, having considered the same, reports favorably thereon and recommends that the nomination be confirmed.

COMMITTEE ACTION

The nomination of James G. Stearns to be a public member of the Securities and Investor Protection Corporation was submitted by President Reagan to the Senate on February 2, 1982, and was referred to the Committee on the same day. Mr. Stearns testified before the Committee on April 20, 1982.

At its meeting on April 28, 1982, the Committee voted 8 to 6 to report the Stearns nomination favorably to the Senate. Senators who voted in favor were: Garn, Tower, Heinz, Armstrong, Lugar, D'Amato, Chafee and Schmitt. Those Senators voting in the negative were: Riegel, Proxmire, Cranston, Sarbanes, Dodd and Sasser.

COMMITTEE COMMENTS

On February 2, 1982 President Reagan nominated James G. Stearns to be a public member of the Securities Investor Protection Corporation and the President announced his intention to designate him Chairman.

The Securities Investor Protection Act of 1970 provides that SIPC have a Board of Directors consisting of seven persons as follows:

(A) One director shall be appointed by the Secretary of the Treasury from among the officers and employees of the Department of the Treasury.

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(B) One director shall be appointed by the Federal Reserve Board from among the officers and employees of the Federal Reserve Board.

(C) Five directors shall be appointed by the President, by and with the advice and consent of the Senate, as follows:

(i) three such directors shall be selected from among persons who are associated with, and representative of different aspects of, the securities industry, not all of whom shall be from the same geographical areas of the United States, and

(ii) two such directors shall be selected from the general public from among persons who are not associated with a broker or dealer or associated with a member of a national securities exchange, . . . or other securities industry group, and who have not had any such association during the two years preceding appointment.

The Act also requires the President to designate a Chairman and a Vice Chairman from those directors selected from the general public. Mr. Stearns meets all the statutory requirements of a person nominated from the general public.

Mr. Stearns brings with him broad general management experience. His background in public service spans over 30 years in elective and appointive office at the state and local government level. His governmental management experience has included responsibility for operating large departments of the California state government where he was responsible for executive, budgetary and personnel decisions dealing with multi-million dollar budgets and thousands of state employees.

From 1967–1972, Mr. Stearns was Director of the California State Department of Conservation. He was responsible for the Divisions of Forestry, Mines and Geology, Oil and Gas, and Soil Conservation, and supervised 3,000 state employees under a budget of $50 million.

From 1972–1975, Mr. Stearns served as Secretary of Agriculture and Services for the State of California. This was one of six cabinet level positions established by the Governor. In that position, Mr. Stearns had responsibility for the activities of 13 state government departments including Agriculture, Consumer Affairs, Industrial Relations, General Services, Veterans Affairs, Public Employees Retirement, Franchise Tax, and state personnel administrative functions. As Secretary, Mr. Stearns had 13,000 state employees under his administration and a budget in excess of $2 billion.

At present, Mr. Stearns is serving as Directors of Alcohol Fuels at the Department of Energy. His nomination to that position was approved by the Senate Energy Committee by a 17–0 vote and he was confirmed on July 24, 1981. At Alcohol Fuels, Mr. Stearns has supervised the expenditure or commitment of more than $800 million in Federal Funds (including loan guarantees).

Secretary Edwards of the Department of Energy endorsed Mr. Stearns' nomination as Chairman of SIPC and praised his accomplishments at Alcohol Fuels. In a letter to the Committee, Senator Paul Laxalt also endorsed the nominee because of his "proven ability" of succeeding at difficult tasks and his "keen management skills".

As the full time director at SIPC, Mr. Stearns' general management skills will be complemented by a strong board which includes 3 members from the securities industry as well as the Assistant Secretary of Treasury for Domestic Finance, the Director of Research

and Statistics at the Federal Reserve Board, and a professional staff of 22 with over 146 years of experience at SIPC.

The Securities Investor Protection Act of 1970 was intended "to provide greater protection for customers of registered brokers and dealers and members of national securities exchanges." The Committee believes that James Stearns is qualified to serve as a director of SIPC and to lead it in fulfilling the responsibilities which Congress has entrusted to SIPC. The Committee therefore recommends that the Senate confirm Mr. Stearns' nomination.

ADDITIONAL VIEWS OF SENATORS RIEGLE, PROXMIRE, CRANSTON, SARBANES, DODD, AND SASSER

By a vote of 8 to 6, the Banking Committee reported out the nomination of James G. Stearns to be a member (Chairman) of the Securities Investor Protection Corporation (SIPC). We voted against Mr. Stearns' confirmation because we believe he does not have the requisite background to occupy the position of Chairman of SIPC. The Senate's constitutional obligation in the confirmation of presidential nominees—to advise and consent—is a mandate to exercise our best judgment about the qualifications of the nominee for the job and not simply to rubberstamp the President's choice. In general, we believe that an Administration should be given wide latitude in selecting people to carry out its program. But we cannot consent to a nominee who is not qualified for the position to which he is nominated, and we would advise the President to withdraw the nomination.

There is no evidence in the record that Mr. Stearns has the necessary background to be an effective Chairman of SIPC, which is an important federal agency that requires a knowledgeable leader. Congress established SIPC in 1970 to provide safeguards against investor losses arising from the failure of securities broker-dealers. SIPC insures investor accounts at broker-dealer securities firms up to $500,000 for securities and up to $100,000 for cash held by such firms on behalf of customer investors. In the event of a securities firm's failure, SIPC's insurance provides protection for investors and liquidates the broker-dealer firm.

The SIPC board consists of seven members—one from the Department of the Treasury, designated by the Secretary; one from the Federal Reserve, designated by the Chairman of the Federal Reserve Board; three who are directly associated with the securities industry; and two from the general public. The Chairman is the only full-time director, and is the day-to-day manager of the agency. The Chairman and Vice Chairman are required to be designated from the two public members nominated by the President. With respect to the Chairman and Vice Chairman being chosen from the general public, Congress specifically intended that they have background experience which shows an ability to perform the task of managing SIPC. The House Committee Report (from which the provision relating to membership from the general public arose) states:

> Two public members of the seven member board would be appointed by the President of the United States. *It is contemplated by your Committee that these members appointed by the President would be knowledgeable in the areas of concern to SIPC*, but that such members would not be associated with the securities industry. There is obviously a strong general public interest as well as a specific investor interest in the operations of SIPC. Your Committee expects that the President would appoint individuals who would be strongly conscious of and sensitive to those interests. (Emphasis added.)

The Banking Committee's approval of Mr. Stearns' nomination to be Chairman of SIPC flies in the face of this Congressional intent that the public members appointed by the President be "knowledgeable in the areas of concern to SIPC."

There is good and sufficient reason for the Chairman of SIPC to be acknowledgeable in securities matters. SIPC plays a key role in the guaranteeing of the integrity of the securities markets.

SIPC consults with the Securities and Exchange Commission (SEC), the various stock exchanges, and the National Association of Securities Dealers with respect to firms who appear to be in financial difficulty. SIPC administers an early warning system relating to the condition of securities firms provided by these agencies. When SIPC finds that a broker-dealer is insolvent, or that a receiver has been appointed, or that a broker-dealer is in violation of the SEC capitalization rules or fails to keep records to allow a determination of its financial condition, SIPC is empowered to petition a federal court for the appointment of a trustee to liquidate the firm.

In a liquidation proceeding, SIPC has many options. It can transfer the failed firm's accounts "in bulk" to another securities firm so that its customer transactions can be continued as before, it can pay customers cash for the value of their securities, or it can buy securities in the market to replace the customer's lost securities. In short, SIPC exercises wide discretion on highly technical matters in the management of the orderly liquidation of failed broker-dealer firms to protect the securities markets and, thus, the general public.

In recent years the financial services industry has undergone a number of remarkable changes. The proliferation of money market funds and cash management accounts illustrates the rapid evolution and creative talent at work in the industry. Furthermore, our financial system and the economic system in general are experiencing unprecedented strains fostered by high interest rates and numerous government regulations, which may be in need of revision As this change continues, the role and scope of SIPC, as well as other regulatory entities, must be given constant scrutiny to determine whether its existing mandate is adequate to current conditions. There is a question whether the public and the capital markets would be better served if SIPC were given wider statutory powers to assist or merge securities firms in distress and whether investors would be better served if such powers were granted. In fact, an important task force under the auspices of SIPC has been at work on these very questions. What will Mr. Stearns contribute to the discussion? Based upon his background, Mr. Stearns would contribute nothing to the discussion.

The Chairman of SIPC will play a key role in guiding the agency through this period. There will be little, if any, time to learn the skills necessary to discharge effectively these responsibilities. The new Chairman must hit the ground running, while at the same time display the vision necessary to maintain public confidence in his actions. Mr. Stearns' lack of credentials will place him under severe handicaps.

SIPC has had two Chairmen since its inception. Both previously served as SEC Commissioners, and one had been a State Securities Commissioner. In contrast, Mr. Stearns has absolutely no background in the securities field. His major work experience as a rancher and as Secretary of Agriculture of California does not qualify him for this post.

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It has been pointed out by the majority that the SIPC statute requires the Chairman of the agency to be chosen from the general public and to have had no ties with the securities industry in the two years immediately prior to his taking the job. While Congress was trying to assure the Chairman's independence from the securities industry, obviously it was not suggesting that he or she have no knowledge about or experience in the field. Quite the contrary, as the House Committee Report clearly states, the SIPC members from the general public were to be knowledgeable in securities matters in order to fulfill their responsibilities. The appointment of two former SEC Commissioners to the post of Chairman of SIPC reinforces the logical view that Congress wished to have securities experts, albeit independent ones, fill the job.

It has also been argued that the Chairman need not be experienced in the securities field because he will have the assistance of the Chairman of the SEC, representatives of the Treasury Department and the Federal Reserve, and SIPC's own fine staff. But the fact of the matter is that the Chairman of SIPC, and none of these other people, will have the responsibility for its day-to-day operations.

Mr. Stearns' nomination is a sharp departure from the established practice of entrusting the chairmanship of SIPC to a person conversant with securities matters. We have no reason whatever to question Mr. Stearns' integrity or his competence in agricultural matters. The fact remains that he does not have the professional background to qualify for a job as technical, complex, and crucial to the financial markets as the SIPC chairmanship.

We, therefore, respectfully urge rejection of the nomination of James G. Stearns to the Chairman of the Securities Investor Protection Corporation.

DONALD W. RIEGLE, JR.
ALAN CRANSTON.
CHRISTOPHER J. DODD.
WILLIAM PROXMIRE.
PAUL SARBANES.
JIM SASSER.

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